

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

BRETT TALMADGE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12835
Trial Court No. 3PA-11-1885 CI

MEMORANDUM OPINION

No. 6700 — September 12, 2018

Appeal from the Superior Court, Third Judicial District, Palmer,
Vanessa H. White, Judge.

Appearances: Michael Horowitz, Kingsley, Michigan, under
contract with the Office of Public Advocacy, Anchorage, for the
Appellant. Diane L. Wendlandt, Assistant Attorney General,
Office of Criminal Appeals, Anchorage, and Jahna Lindemuth,
Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard, Judge.

Judge MANNHEIMER.

Brett Talmadge was convicted of sexually abusing a minor, and this Court affirmed his convictions on appeal. *See Talmadge v. State*, unpublished, 2013 WL 784884 (Alaska App. 2013), and *Talmadge v. State*, unpublished, 2014 WL 5305987 (Alaska App. 2014).

While Talmadge's direct appeal was still pending before this Court, Talmadge filed a *pro se* petition for post-conviction relief.

An attorney was appointed to represent Talmadge in this post-conviction relief proceeding, but Talmadge's attorney ultimately filed a "certificate of no merit" under Alaska Criminal Rule 35.1(e)(2)(C). In this certificate, the attorney asserted that none of the claims listed in Talmadge's petition had any arguable merit.

Based on this certificate of no merit, the superior court dismissed Talmadge's petition for post-conviction relief. Talmadge now appeals this dismissal.

The State concedes that it was error for the superior court to dismiss Talmadge's petition. The State acknowledges that the superior court and Talmadge's court-appointed counsel made substantial efforts to sort through Talmadge's lengthy list of *pro se* claims, but the State points out that the court and the attorney failed to address all of these claims. Moreover, the court and the attorney failed to address the possibility that Talmadge had other arguable claims, apart from the ones listed in his petition.

See Griffin v. State, 18 P.3d 71 (Alaska App. 2001), and *Tazruk v. State*, 67 P.3d 687 (Alaska App. 2003).

We have examined the record, and we conclude that it supports the State's concession of error.¹

Accordingly, the judgement of the superior court is REVERSED, and the superior court is directed to renew its consideration of Talmadge's case.

¹ *See Marks v. State*, 496 P.2d 66, 67-68 (Alaska 1972) (requiring an appellate court to independently assess any concession of error by the State in a criminal case).